Supreme Court, U.S.
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No.

IN THE

Supreme Court of the United States

MYRON G. KING, PETITIONER

v.

PENSION TRUST FUND OF THE PENSION HOSPITALIZATION AND BENEFIT PLAN OF THE ELECTRICAL INDUSTRY AND JOINT INDUSTRY BOARD OF THE ELECTRICAL INDUSTRY

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

ERISA requires plan administrators to respond truthfully to questions from plan participants, and to provide accurate copies of specified plan documents in response to written requests. In addition, ERISA prohibits plan amendments that "cut back" the value of accrued pension benefits or "backload" pension benefits by valuing disproportionately a participant's later years of service. ERISA's regulations test for violations of these provisions by questioning whether a plan amendment has these prohibited effects on the pension benefits of *any* plan participant. The questions presented are:

1. Must a pension plan participant prove "reliance" or "likely prejudice" to prevail against a plan administrator who breached its fiduciary duty to provide accurate information and documentation in response to that participant's written requests?

2. Does a participant who is injured by a plan amendment that violates ERISA's anti-cutback and backloading provisions have standing to contest its lawfulness, or is standing limited only to those who can demonstrate these violations with respect to their own pensions?

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PETITION FOR A WRIT OF CERTIORARI

Myron G. King respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit in this case.

OPINIONS BELOW

Petitioner includes the unpublished orders denying rehearing or hearing *en banc* in the Appendix (App. 46a)[1]. The opinion of the court of appeals panel is reported at 131 Fed. Appx. 740 ((App. 1a-4a). The opinion of the district court is reported at 31 Employee Benefits Cas. (BNA) 1671 (E.D.N.Y. 2003)(App. 5a-45a).

JURISDICTION

The court of appeals filed its summary order affirming the district court on February. 22, 2005. It denied a timely petition for rehearing and hearing *en banc* on June 1, 2005. Petitioner invokes the jurisdiction of this Court under 28 U.S.C. § 1254(1).

STATUTES AND REGULATORY PROVISIONS INVOLVED

The pertinent statutory and regulatory provisions involved are reproduced in the Appendix. The statutes involved are ERISA §§ 104(b)(4), 502(a)(1), (a)(3),(c), 504(b) and (g).

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[1] References to the Appendix to this Petition will be denoted as "App. __," with the appropriate page of the appendix inserted. References to the Special Appendix of the Brief of Appellant and Special Appendix, filed with the Second Circuit Court of Appeals, will be denoted as "SPA__." References to the Joint Appendix filed with Second Circuit will be denoted as "JA-__."

STATEMENT OF THE CASE

Petitioner Myron G. King sued for vested pensions benefits owed to him by Respondent Pension Trust Fund of the Pension, Hospitalization and Benefit Plan of the Electrical Industry (the "Plan"). Petitioner also sought to redress a breach of fiduciary duty by Respondent Joint Industry Board, the Plan Administrator (JA-10-18). This case asks this Court to determine the elements necessary to establish fiduciary liability by a plan administrator who provides misleading information to a plan participant. Appellate courts are conflicted regarding whether a participant must prove reliance upon, or merely likely prejudice resulting from, that false statement. In addition, this case considers the standing of a plan participant to challenge the lawfulness of a plan amendment expressly relied upon by the Plan to deny him pension benefits.

This Court should grant the writ of certiorari in this case because the Second Circuit panel decision insulates plan administrators from liability for providing false information absent proof of reliance. That holding undermines Congress' mandate that plan fiduciaries accurately inform participants of their rights and benefits. The Second Circuit's decision also narrows the category of participants with standing to contest the lawfulness of plan amendments that affect their pension benefits, thereby increasing the likelihood that amendments that violate ERISA, and threaten the integrity of pension plans, will remain effective.

A. Statutory Background

1. Plan Requirements and Fiduciary Duties

Congress enacted ERISA in 1974 in response to its finding that "owing to the lack of employee information and adequate safeguards concerning [retirement plans], it is desirable...that disclosure be made and safeguards be provided with respect to the establishment operation, and

administration of such plans..." It found further that "many employees with long years of employment are losing anticipated retirement benefits owing to the lack of vesting provisions in such plans..." ERISA § 2(a), 29 U.S.C. § 1001(a).

By enacting ERISA, Congress sought to protect ... participants in employee benefit plans and their beneficiaries, by requiring the disclosure and reporting to participants and beneficiaries of financial and other information with respect thereto, by establishing standards of conduct, responsibility and obligations for fiduciaries of employee benefit plans, and by providing for appropriate remedies, sanctions, and ready access to the Federal courts.

ERISA § 2(b), 29 U.S.C. § 1001(b).

ERISA mandates that pension plans regularly make specified disclosures to the Government and plan participants. The Act specifies certain requirements pension plans must satisfy in terms of the vesting, accrual, and payment of pension benefits. To ensure compliance, it created an enforcement mechanism that permits both private parties and the Government to sue for specified violations of ERISA. "ERISA is, we have observed, a comprehensive and reticulated statute, the product of a decade of congressional study of the Nation's private employee benefit system." *Mertens v. Hewitt Assocs.*, 508 U.S. 248, 251 (1993).

ERISA requires plans regularly to disclose material information to their participants by means of Summary Plan Descriptions, or SPDs. ERISA § 102 specifies that an SPD must include: (1) the name and type of administration of the plan; (2) the name and address of the administrator; (3) the names of the trustees and their addresses; (4) the plan's requirements respecting eligibility and benefits; (5) a description of provisions providing for nonforfeitable pension benefits; (6) circumstances that that may result in disqualification, ineligibility, denial, or loss of benefits;(7)

the claims procedure; and (8) the procedure to appeal a plan determination. 29 U.S.C. § 1022.

Congress recognized, however, that an SPD may be too cursory to contain all of the information necessary for a participant to understand how the plan functions and to determine benefit entitlements. Accordingly, ERISA §104(b)(4) provides that plan administrators "shall, upon written request of any participant or beneficiary, furnish a copy of ... the latest annual report, any terminal report, the bargaining agreement, trust agreement, contract or the instruments under which the plan is operated." 29 U.S.C. § 1024(b)(4). Particularly in light of Congress' concern in enacting ERISA, a plan administrator must respond truthfully to a participant's questions regarding the terms of the plan:

> ERISA requires a "fiduciary" to "discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries." ERISA § 404(a). To participate knowingly and significantly in deceiving a plan's beneficiaries in order to save the employer money at the beneficiaries' expense is not to act "solely in the interest of the participants and beneficiaries." As other courts have held, "lying is inconsistent with the duty of loyalty owed by all fiduciaries and codified in section 404(a)(1) of ERISA."

Varity Corp. v. Howe, 516 U.S. 489, 506 (1996) (quoting *Peoria Union Stock Yards Co. v. Penn Mut. Life Ins. Co.*, 698 F.2d 320, 326 (7th Cir. 1983)).

Congress also protected the "anticipated retirement benefits" of plan participants by enacting minimum vesting and accrual requirements, and prohibiting plans from retroactively reducing vested pension benefits. It intended that the minimum vesting standards provide employees, after a specified number of years, with a nonforfeitable interest in amounts deriving from an employer's contribution.

Employees who leave employment covered by that pension plan after they have vested, but before they reach retirement age, thus can anticipate receiving pension benefits. J. Langbein & B. Wolk, *Pension and Employee Benefit Law* 121 (3d ed. 2000) ("The central problem to which ERISA is addressed is the loss of pension benefits previously promised").

Congress recognized that even vested benefits would mean little, and provide an illusory basis for retirement planning, if plans could cut them back after vesting, or if vested benefits accrued so slowly that an employee would forfeit the lion's share by leaving covered employment before retirement. This Court explained the importance of ERISA's anti-cutback provision as follows: "[W]hen Congress enacted ERISA, it 'wanted to make sure that that if a worker has been promised a defined pension benefit upon retirement--and if he has fulfilled whatever conditions are required to obtain a vested benefit—he actually will receive it.'" *Central Laborers' Pension Fund v. Heinz*, 541 U.S. 739, 743 (2004) (quoting *Lockheed Corp. v. Spink*, 517 U.S. 882, 887 (1996)). Thus, ERISA protects retirement benefits by means of its "anti-cutback" rule, which prohibits a plan from reducing the value of accrued pension benefits, except for a narrow set of circumstances not relevant to this case. *Id.* at 744 ("ERISA's anti-cutback rule is crucial to this object"). Likewise, ERISA's "anti-backloading" provision prohibits a plan from disproportionately valuing later years of service, thereby minimizing the vested benefits of those who leave covered employment before retirement. ERISA §§ 204(b) and(g), 29 U.S.C. §§ 1054(b) and (g). (App. 47a-55a; 59a-62a).

> Congress saw that if benefits were required to accrue, but allowed to accrue in any manner, defined benefit plans could be designed to backload accrued benefits to later years of service, thereby making pre-retirement vesting ineffective. As the House Ways and Means Committee stated: '[O]therwise a plan

> which wishes to evade the vesting requirements could provide for *de minimis* accruals until an employee's last years of employment, at which point very large accruals would be produced."

S. R. Bruce, *Pension Claims: Rights and Obligations* 112 (2d ed. 1993) (quoting H.R. Rep. No. 807, 93rd Cong., 2d Sess. at 61, 2 ERISA Leg. Hist. 3181).

2. ERISA Enforcement

> One of ERISA's declared policies is to provide "ready access to the Federal courts." as a means of protecting the interests of participants and their beneficiaries in employee benefit plans. Congress recognized that a major weakness of prior federal legislation,..., was the absence of an effective enforcement mechanism—in particular, the absence of a private right of action for plan participants. ERISA addressed this problem by providing an elaborate system for enforcing the requirements of ERISA Titles I and IV and of plan's terms through civil litigation, primarily in the federal courts.

S. Sacher & J. Singer, *Employee Benefits Law* 874 (2d ed. 2000) (quoting ERISA § 2(b), 29 U.S.C. §1001(b)).

ERISA's multifaceted enforcement system provides for both private and government enforcement actions. For example, ERISA § 502(a)(1)(a) authorizes suit by a participant to redress a plan administrator's failure to provide requested information. Section 502(a)(1)(b) permits a participant to sue for benefits or to clarify benefit rights; § 502(a)(3) is ERISA's "catch-all" provision that permits a participant to sue for equitable relief to remedy violations of ERISA plan terms. 29 U.S.C. § 1132 (a). *See Varity Corp.*, 516 U.S. at 507-08 (explaining this comprehensive civil